

Defendants Ramberg, Schultz and Lubarsky demurred to the second cause of action of plaintiff's first amended complaint that alleged abuse of a dependent adult. The demurrer was sustained with leave amend the cause of action. Plaintiff has not filed any amended pleading. Now defendant Sierra Vista Hospital, which did not participate in that demurrer, has filed the current motion for judgment on the pleadings on the second cause of action. Sierra Vista contends that the pleading fails to allege facts sufficient to constitute a cause of action for abuse of a dependent adult and that the cause of action is barred by collateral estoppel.

The argument concerning collateral estoppel fails because there is no final and valid judgment as to the second amended complaint:

“Under the doctrine of collateral estoppel or issue preclusion, when an issue of ultimate fact has been determined by a valid and final judgment, that issue cannot be relitigated between the same parties in a future lawsuit.” *California Logistics, Inc. v. State* (2008) 161 Cal.App.4th 242, 249

Because there is no final judgment of dismissal, relief based upon collateral estoppel is unavailable.

With respect to the merits, the Court's prior ruling regarding the individual defendants was based upon the conclusion that the first amended complaint did not plead sufficient facts to show neglect or to establish that defendants were guilty of recklessness, oppression, fraud and malice in the commission of the alleged abuse. These are the identical facts implicating Sierra Vista, although the first amended complaint also alleges that Sierra Vista was negligent in the hiring, training and supervision of its employees.

Consistent with the Court's ruling on the previous demurrer, the allegations related to abuse of a dependent adult do not allege sufficient facts to show neglect and to establish that defendant was guilty of recklessness, oppression, fraud and malice in the commission of the alleged abuse. *Delaney v Baker* (1999) 20 C4th 23, 31-32. The allegations regarding the negligence of Sierra Vista in hiring, training and supervising its employees do not change the result. Therefore, the motion for judgment on the pleadings is granted.

The plaintiff has already decided not to file an amended complaint in response to the court's grant of leave to amend. “Plaintiff's refusal to amend is deemed an admission that they have stated the case as strongly as they can and there are no more facts that could be alleged to cure the defect.” Weil & Brown, *Civil Procedure Before Trial* (Rutter Group 2008) §7:149.1 Therefore the motion is granted without leave to amend.